Shane Steel Processing, Inc. and J&J Land, LLC and Local 771, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL—CIO. Cases 7—CA—47710 and 7—CA—48016

November 28, 2008

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

The General Counsel seeks a default judgment in this case on the ground that the Respondents, Shane Steel Processing, Inc. (Shane) and J&J Land, LLC (J&J), a single employer, have failed to file an answer to the supplemental compliance specification.

On May 31, 2006, the Board issued a Decision and Order in the above-captioned cases¹ that, among other things, ordered Respondent Shane to make unit employees whole for any loss of earnings and other benefits resulting from Respondent Shane's unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.² On November 21, 2006, the United States Court of Appeals for the Sixth Circuit entered a judgment enforcing the Board's Order.³

A controversy having arisen over the amount of backpay and other benefits owed the unit employees, on May 7, 2007, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. On April 1, 2008, Administrative Law Judge Keltner W. Locke issued a Supplemental Decision and Order, finding Respondent Shane and Respondent J&J to constitute a single employer. Judge Locke found the Respondents' liability to total \$146,049.25, plus interest. That amount, however, did not include backpay related to Shane's 401(k) plan for the period January 1 through March 22, 2007. The Board has affirmed Judge Locke's findings in a Supplemental Decision and Order issued today.

Thus, a controversy exists regarding the Respondents' liability for 401(k) moneys for the period January 1 through March 22, 2007, owed the discriminatees under the terms of the Board's May 31, 2006 Order. On April 17, 2008, the Regional Director issued a supplemental compliance specification and notice of hearing alleging the supplemental amount due under the Board's May 31, 2006 Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the supplemental compliance specification, the Respondents have failed to file an answer.⁷

On June 3, 2008, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits. On June 5, 2008, the Board issued an order transferring the proceeding to itself and a Notice to Show Cause why the motion should not be granted. On June 19, 2008, Respondent J&J filed a limited objection stating that, although it had no objection to the increase in the amount of potential damages in the supplemental compliance specification, its liability for that amount ultimately depends on the Board's decision on its exceptions to the finding, in Judge Locke's Supplemental Decision, that Shane and J&J constitute a single employer.8 Respondent Shane filed no response to the Notice to Show Cause. The allegations in the motion and in the supplemental compliance specification are therefore undisputed.

Ruling on the Motion for Summary Judgment⁹

Section 102.56(a) of the Board's Rules and Regulations provides that the respondent shall file an answer within 21 days from service of a compliance specifica-

¹ 347 NLRB No. 18 (not reported in Board volumes).

² Shane was the only respondent named in that proceeding.

³ No. 06-2111.

⁴ The compliance specification named J&J as a respondent and a single employer with Respondent Shane.

⁵ As noted in the judge's supplemental decision, after the close of the hearing, the General Counsel filed a motion asking the judge to order the Respondents to pay 401(k) moneys owed from January 1 through March 22, 2007. The General Counsel so moved because the Respondents did not provide records needed to calculate the amount of 401(k) liability during that period until after the close of the hearing. The judge denied the General Counsel's motion without prejudice to the General Counsel seeking this additional 401(k) liability in a separate proceeding. Rather than file exceptions to the judge's ruling, the General Counsel issued the instant supplemental compliance specification to recover the 401(k) reimbursements at issue.

⁶ Shane Steel Processing, Inc., 353 NLRB No. 58.

⁷ On April 17, 2008, a copy of the supplemental compliance specification and notice of hearing was served on Respondents' counsels. Thereafter, on May 9, 2008, the Regional Attorney served on the Respondents' counsels a letter by certified and regular mail informing them that the Respondents had not filed an answer to the supplemental compliance specification and notice of hearing, and further advising that, unless they filed an appropriate answer by May 15, 2008, a motion for default judgment would be filed. We take administrative notice of the fact that Respondent Shane closed its business on about March 22, 2008. See *Shane Steel Processing, Inc.*, 352 NLRB No. 28 (2008).

⁸ On June 27, 2008, the General Counsel filed a response in which it agreed with Respondent J&J's assertion that its 401(k) liability is contingent on a finding that it is a single employer with Shane. As stated, the Board has made that finding.

⁹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

tion. Section 102.56(c) provides that if the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the supplemental compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the supplemental compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment.

ORDER

The National Labor Relations Board orders that the Respondents, Shane Steel Processing, Inc. and J&J Land

LLC, a single employer, Fraser, Michigan, their officers, agents, successors, and assigns, shall make whole the individuals named in the supplemental compliance specification by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

DISCRIMINATEE	TOTAL	DISCRIMINATEE	TOTAL
Jackie Davis	\$ 0.00	Patrick Randazzo	\$ 0.00
Gary Engle	0.00	Richard Regelin	0.00
Robert Hayes	0.00	Robert Rochner	368.60
William Koch	349.89	William Silew	78.46
Kenneth LaFleur	0.00	Joseph Sliwinski	0.00
Nick Maltese	91.87	Julio Vargas	151.55
William Martin	0.00	Mirko Vitanoski	0.00
Mark Moore	0.00	Frederick Wendt	240.28
Terry Poore	0.00	Howard Wucetich	0.00
TOTAL BACKPAY			\$1,280.65